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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181035
Party	Plaintiff Tiffany (NJ) LLC
Correspondence Address	Barbara A. Solomon Fross Zelnick Lehrman & Zissu, PC 866 United Nations Plaza New York, NY 10017 UNITED STATES bsolomon@frosszelnick.com, egourvitz@frosszelnick.com
Submission	Other Motions/Papers
Filer's Name	Evan Gourvitz
Filer's e-mail	egourvitz@frosszelnick.com, bsolomon@frosszelnick.com
Signature	/Evan Gourvitz/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/912,427  
Published in the Official Gazette on September 4, 2007

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TIFFANY (NJ) LLC,

Opposer,

v.

TIFFANY C. KOURY,

Applicant.

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Opposition No. 91181035

**REPLY MEMORANDUM IN FURTHER  
SUPPORT OF OPPOSER'S MOTION TO COMPEL**

Tiffany (NJ) LLC (together with its predecessor Tiffany (NJ) Inc. "Opposer") hereby submits this memorandum to address the false and misleading statements in Applicant Tiffany Koury's ("Applicant") August 21, 2008 opposition to Opposer's August 1, 2008 motion to compel Applicant to properly and fully respond to Opposer's discovery requests.<sup>1</sup>

**PRELIMINARY STATEMENT**

In her opposition to Opposer's August 1, 2008 motion to compel and memorandum in support of that motion ("Opp. Mem."), Applicant had the opportunity to provide evidence showing her use of the TIFFANY KOURY mark on all of the goods set forth in her Application Serial No. 78/912,427 (the "Application") as of the filing date of the Application, the date of the declaration submitted in support of the Application, and the first use and first use in commerce

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<sup>1</sup> Opposer respectfully requests that the Board consider this reply memorandum because it clarifies the issues under consideration in this motion. *See* 37 C.F.R. § 2.127(a); TBMP § 502.02(b) (and cases cited therein).

dates claimed in the Application.

If, as Applicant now contends, she already had properly and fully responded to Opposer's earlier requests for such evidence, it would have been a simple matter to cite to and include the relevant responsive answers and documents as exhibits in support of her August 21, 2008 memorandum in opposition to Opposer's motion ("App. Mem."). Instead, Applicant raised spurious complaints that Opposer served too many interrogatories, falsely claimed that pages on her website (which were provided to Opposer – in raw, unorganized form – only after Opposer filed this motion) were fully responsive to these requests, and improperly suggested that Opposer was obligated to determine what these web pages meant or how they were responsive to Opposer's discovery requests. As discussed below, Applicant's arguments are meritless.

### **ARGUMENT**

#### **I. Applicant's Interrogatory Responses are Deficient**

##### *A. Verification of Applicant's Interrogatory Responses*

Because Opposer finally received Applicant's verification of its first set of interrogatory responses on September 4, 2008, Opposer no longer needs the Board's assistance on this issue.

##### *B. Applicant May Not Properly Produce Documents in Response to Opposer's Straightforward Interrogatories*

Applicant appears to claim that she properly responded to certain of Opposer's interrogatories by producing documents and by referring Opposer generally to her website. (*E.g.*, App. Mem. at 5-8, 11-12.) This is incorrect.

First, nowhere does Applicant prove – or even contend – that providing written responses to the interrogatories at issue would impose a "significant burden" on Applicant, a prerequisite to producing documents in lieu of a written response. *E.g.*, *No Fear Inc. v. Ruede D. Rule*, 54 U.S.P.Q.2d 1551, 1555 (T.T.A.B. 2000). Second, nowhere does Applicant show that dumping

documents on Opposer would not leave Opposer “with any greater burden than the responding party when searching through and inspecting the records.” *Id.* Given these circumstances, Applicant may not respond to Opposer’s interrogatories asking her to identify the products she has sold and their dates of first sale merely by stating that “Opposer is referred to Applicant’s Document Production.” (*E.g.*, Opp. Mem., Ex. 1 at 2.)

Second, the documents Applicant claims are responsive do not in fact fully or properly answer Opposer’s interrogatories. For example, Interrogatory 2 asked that Applicant

Identify each product that Applicant has sold under Applicant’s Mark to date, and state the date of first sale for each such product. If any product category (*e.g.*, dresses, skirts, etc.) have been discontinued, state for the category of goods discontinued the date of discontinuance and the reason for discontinuance.

(*Id.*) Applicant now says that in response to Interrogatory 2 she “provide[d] sales slips for dresses which were sold at a trunk show October 30, 2005.” (App. Mem. at 7.) Clearly, these sales slips – even if combined with the 2007 Look Book also mentioned in Applicant’s brief, which “contains approximately seventeen (17) dresses” (*id.* at 6) – are insufficient to identify *each* product Applicant purportedly sold under the TIFFANY KOURY mark (which according to the Application include not just “dresses” but “ponchos, bathing suits, bikinis, swimwear, lingerie, underwear, and belts”), the dates of first sale for each such product, whether any given product has been discontinued, and, if so, the date and reason for discontinuance.

Third, Applicant’s reliance on her website is misguided. Applicant did not provide Opposer with a copy of the information set forth on her website until August 21, 2008, when she filed her opposition to this motion to compel. (*See* App. Mem. at 14.) More importantly, Applicant merely produced a CD-ROM with about 175 MB of unsorted files, some of which are undated, some of which are illegible, some of which are unopenable or in unspecified formats, none of which appear to be from before 2007, none of which have been Bates numbered, and

none of which have been labeled or otherwise identified to correspond to any of Opposer's interrogatories. Indeed, despite her obligation to do so, *see* Fed. R. Civ. P. 33(d), Applicant provided no indication in her written discovery responses, or even in the files themselves, sufficient to specify which of these electronic documents are responsive to which of Opposer's interrogatories.

Accordingly, Applicant's responses remain deficient.

*C. Opposer Did Not Submit an Excessive Number of Interrogatories*

In a last-ditch attempt to avoid providing substantive responses to Opposer's interrogatories, Applicant claims that "at the most conservative the Interrogatories easily reach ninety (90)." (App. Mem. at 8.) Among other things, Applicant claims that each interrogatory asking for information about her "products" should be treated as consisting of at least 240 separate subparts – that is, as one subpart for each of Applicant's designs – and that Opposer's definition of "describe" in itself should be treated as at least six separate subparts. (*Id.* at 8-10.) Applicant cites no authority in support of her creative method of counting, which is improper.

First, accepting Applicant's position would make it effectively impossible to ask any meaningful discovery of an Applicant that has multiple products in its application.

Second, the requests (and subparts) at issue each concern such unitary matters as Applicant's date(s) of first use. As such, while they may refer to multiple products, they each are counted as a single interrogatory or subpart, not multiple subparts for each such product. *See* TBMP § 405.03(d) ("[i]f an interrogatory requests 'all relevant facts and circumstances' concerning a single issue, event, or matter . . . it will be counted as a single interrogatory").

Third, while Applicant claims that if it "were . . . to abide by Opposer's definition of the word 'describe'" this would add "another six pieces of information to its answer" (App.

Mem. at 9-10), this ignores the rule that “[t]he introductory instructions or preamble to a set of interrogatories will not be counted by the Board as interrogatories or subparts for purposes of determining whether the limit . . . has been exceeded.” TBMP § 405.03(d). Accordingly, Opposer’s introductory definitions, including its definition of “describe,” should not be counted in determining the number of its interrogatories.

Accordingly, the Board should abide by Opposer’s count of its interrogatories (Opp. Mem., Ex. 12), and order Applicant to submit proper and full responses to each without delay.

## **II. Applicant’s Document Production is Deficient**

Without addressing any of Opposer’s document requests individually (*see* Opp. Mem. at 14-17 (noting deficiencies in specific responses)), Applicant claims that “she has submitted sufficient documentation, including her website, to clearly demonstrate that the mark registered has been used on each category of good before the date of her declaration thereby foreclosing any allegation of fraud made by Opposer.” (App. Mem. at 13-14.) Notably, however, she has not identified the documents that supposedly support her claim of use in connection with each identified product, or that supposedly show her date(s) of first use.

The simple fact is that Applicant has *not* produced documents evidencing her use of the TIFFANY KOURY mark on *all* of the goods set forth in the Application – “[c]lothing, namely, dresses, ponchos, bathing suits, bikinis, swimwear, lingerie, underwear, and belts” – as of the date of her sworn declaration and the Application filing date, June 20, 2006. Indeed, Applicant’s website only appears to include documents purportedly depicting *certain* of Applicant’s products (dresses and swimwear, but *not* ponchos, lingerie, underwear, or belts). The “2006 photoshoot downloaded to disc” that Applicant mentions (App. Mem. at 14) actually is labeled “Tiffany Koury **Spring 2007** Shoot,” and the documents on that disc – which, again, appear to depict only

dressess and swimwear – appear to have been created on September 17 or 18, 2006 – again, after the filing of the Application and after Applicant’s declaration was signed.

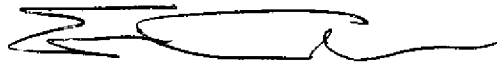
Applicant claims that “[i]t is not necessary for Applicant to produce documents or itemize each and every sale of each and every product and detail the date and amount for each in order to defeat the Opposer’s claim of fraud.” (App. Mem. at 15.) This is true, but Applicant has not even produced evidence *sufficient* to show (i) her use of the TIFFANY KOURY mark (ii) in commerce (iii) in connection with each product in her application – “dressess, ponchos, bathing suits, bikinis, swimwear, lingerie, underwear, and belts” (iv) as of the date of her declaration, June 20, 2006. She should be compelled to do so, and to remedy all of her other deficiencies.

### **CONCLUSION**

For the reasons set forth above and in Opposer’s original brief and supporting materials, Opposer respectfully requests that its motion be granted in its entirety.

Dated: New York, New York  
September 9, 2008

FROSS ZELNICK LEHRMAN & ZISSU, P.C.



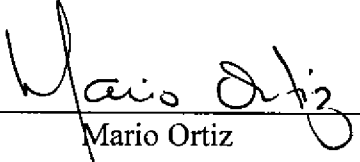
By: Barbara A. Solomon  
Evan Gourvitz  
Attorneys for Opposer  
866 United Nations Plaza  
New York, New York 10017  
Phone: (212) 813-5900  
Fax: (212) 813-5901

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 9, 2008, a true and correct copy of the attached **REPLY MEMORANDUM IN FURTHER SUPPORT OF OPPOSER'S MOTION TO COMPEL** was served by First Class Mail, Postage Prepaid, on Applicant's counsel at:

Kathy Lane, Esq.  
Newman Dichter LLP  
505 Fifth Ave South, Suite 610  
Seattle, WA 98104

Kathy Lane, Esq.  
Newman Dichter LLP  
488 Madison Avenue, 10<sup>th</sup> Floor  
New York NY 10022

  
Mario Ortiz